

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	DECISION
In the Matter of Protest of:)	
)	CASE No. 2010-105
)	
Whaley Food Service)	
)	
)	
The Citadel)	POSTING DATE:
IFB No. T0035-JW-02/12/2010)	April 9, 2010
Preventive Maintenance and Minor)	
Repairs to the Food Service Equipment)	MAILING DATE:
in Coward Hall,)	April 9, 2010

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Whaley Food Service (Whaley). (Copy attached.) With this invitation for bids (IFB), The Citadel attempts to procure a multi-year contract for preventive maintenance and minor repairs to the food service equipment in Coward Hall. In the letter, Whaley protested The Citadel's award to Hobart Service in North Charleston, SC (Hobart) alleging "Hobart Service is not a CFESA Certified company, they should not be awarded this contract." Whaley alleged that the IFB required that all bidders be certified by CFESA, but The Citadel issued its award to Hobart in spite of the fact that Hobart does not hold such certification.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

In response to the solicitation, The Citadel received the following bids:

<u>Bidder</u>	<u>Bid Amount</u>
Hobart	\$24,383
Whaley	\$27,324
[Bid tab attached]	

On February 23, 2010, The Citadel issued an award to Hobart.

CONCLUSIONS OF LAW

Due to the amount of the award in question, the CPO lacks jurisdiction in the matter. The SC Consolidated Procurement Code reads, in pertinent part:

(1) Right to Protest; Exclusive Remedy.


(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(d) The rights and remedies granted by subsection (1) and Section 11-35-4410(1)(b) are not available for contracts with an actual or potential value of up to fifty thousand dollars. [11-35-4210] [Emphasis added]

As the amount of the award in question is less than \$50,000, by law, the CPO must dismiss the protest for lack of jurisdiction.

DETERMINATION

The protest is dismissed for lack of jurisdiction.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

April 9, 2010

Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



February 24, 2010

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

To Whom It May Concern:

Please accept this letter of protest regarding the February 24th award of Contract # T0035-JW-02/12/2010 to Hobart Service in North Charleston, SC.

Per original bid document dated January 14, 2010:

Page 11: "The contractor shall currently be, and shall remain to be throughout the duration of this contract, a Certified CFESA Company. The Contractor shall provide contracted services by employees who have achieved Master Technician certification by the CFESA, or employees who are under the direct supervision of a certified CFESA Master Technician, throughout the duration of this contract."

Page 17: "Contractor has adequate and duly trained commercial kitchen equipment maintenance personnel in their service organization, certified Master Technicians by CFESA, with local service representative(s) for the geographical (Tri-County) area for which the solicitation is applicable."

These points were brought up in the pre-bid conference. However, none of these conditions were addressed in the only amendment released for this bid. Per page # 7 of the original bid, "Oral explanations or instructions will not be binding." If there was any feeling that this CFESA Certification "unnecessarily or inappropriately limited full or open competition" this should have been addressed, in writing, in the one and only amendment. ***Seeing as Hobart Service is not a CFESA Certified company, they should not be awarded this contract.***

We appreciate your attention to this protest. As a business partner of The Citadel's since 2003, we simply ask for a fair review of this award.

Thank you in advance for your time and consideration.

Sincerely,

Paul Ristau
Whaley Foodservice Repairs
Regional Sales Manager
(843) 860-0208

1211 Island Club Dr.
Charleston, SC
29492

(843) 860-0208
(803) 996-9989 fax
www.whaleyfoodservice.com

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Statement of Award
Posting Date: February 23, 2010

Purchase Order To Be Issued By **THE CITADEL**

Solicitation : T0035-JW-02/12/2010

Issue Date : 01/14/2010

Opening Date : 02/15/2010 at 3:00 PM

Description: Multi-year contract for preventive maintenance and minor repairs to the food service equipment in Coward Hall, The Citadel.

Agency: **THE CITADEL**

Awarded To: Hobart Service
7392 Industry Dr.
N Charleston, SC 29418

Total Potential Value : \$24,383.00

Contract Number : T0035-JW-02/12/2010

Contract Period: March 1, 2010 – February 28, 2014

John Walker
The Citadel
Director of Procurement Services

Hobart Sales

Whaley Food Service

Item	Quantity	Description	Annual Price	Extension	Annual Price	Extension
1	4 years (See list below)	Annual price to perform PM on identified Food Service identified on attachment "A"	\$3,552.00	\$14,208.00	\$4,356.00	\$17,424.00
QTY	UOM	DESCRIPTION	HOURLY RATE	EXTENDED TOTAL	HOURLY RATE	EXTENDED TOTAL
100	HOURS	REGULAR RATE Normal Working Hours 8:00AM to 5:00 PM Monday –Friday	\$74.00 Per hour	\$7,400.00	\$72.00 per hour	\$7,200.00
25	HOURS	AFTER REGULAR RATE Outside of Normal Working Hours 5:00 PM to 8:00AM Nights and weekend	\$111.00 per hour	\$2,775.00	\$108.00 per hour	\$2,700.00
Item Description: Hourly labor rate for repair services identified under this contract.			\$	24,383.00		\$27,324.00

Winning Bidder